P/1318-73

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of

Robert BARRITZ, et al.   Date: July 19, 2000

Serial No.: 09/518,048   Group Art Unit: 2785

Filed: March 2, 2000   Examiner: ----

For: **METHOD AND PROCESS FOR DISPLAYING SOFTWARE PRODUCT INVENTORY AND USAGE INFORMATION CORRELATED WITH LICENSE AGREEMENT INFORMATION**

Asst. Commissioner of Patents
    and Trademarks
Washington, D.C. 20231

DECLARATION OF MAX MOSKOWITZ

Sir:

Max Moskowitz declares:

1.   I am registered to practice before the U.S. Patent and Trademark Office, Registration No. 30,576, and am one of the attorneys who is empowered to act in the above application.

2.   My declaration is made in support of the applicant's Petition to Make Special the present application pursuant to MPEP 708.02 VIII.

3.   I commissioned a search of pertinent prior art by engaging Charles S. Spencer, a Washington D.C. based patent

1

searching bureau, and discovered certain art that may be related to the subject matter of the instant application. Copies of the most pertinent references located during the search or otherwise known to me are enclosed herewith together with a form PTO-1449 as required.

4. The relevant patents are listed below:

Patent Nos.:

6,029,415	5,974,572	5,825,883
5,765,152	5,745,879	5,579,222
6,021,492	5,940,504	5,796,941
5,758,069	5,590,056	

5. The search was conducted in class 705, subclass 58; class 707, subclass 1; class 714, subclass 47 and class 717, subclass 11.

A form PTO 1449 is included listing the art for the convenience of the Examiner. Materials obtained by the Applicant relative to a product called ArgisBudget from Janus Technologies, ("ArgisBudget") are also enclosed. This Declaration and the enclosed form PTO 1449 also list and discuss references obtained from the prosecution of a foreign somewhat related case.

6. In general, the invention is a method and system for displaying software product inventory and usage information

correlated with license agreement information. There are tools

in the prior art that allow one to inventory and/or monitor the

operation of both hardware and software. Other software tools

exist that allow users to enter into a database, information

pertaining to contractual license agreements for the user's

software products. But the prior art has treated these different

types of information as disparate pieces of data. They have not

been linked dynamically or otherwise to allow users to virtually

instantaneously correlate software license agreement information

with software product data which has been inventoried to be

present in a data center or the usage of which has been

monitored.

7.   U.S. Patent No. 6,029,145 to Barritz et al., who

are co-inventors of the present application, includes the present

assignees' teachings in a prior U.S. Patent No. 5,590,056, which

describes the inventorying and surveying component of the present

invention. In general, the present invention, in accordance with

one embodiment thereof is a knowledge base facility which

correlates software product data relating to software products

installed on a computer with related software agreement data. In

accordance with another embodiment, the system is also a

substantially automatic system for correlating software product

data concerning software products installed on a computer with related software agreement data. The '145 patent goes on to describe a centralized facility for receiving license usage information from a plurality of sources and for combining and streamlining it so that it can be transmitted in composite units to pertinent vendors. However, this document does not describe the dynamic correlation of license agreement information with inventory/usage lists of software in a manner of the present invention.

8. <u>U.S. Patent No. 6,021,492 to May</u>, focuses on a Software metering management of remote computing devices. Software metering relates to systems which both monitor the usage and control access to software applications. However, this document is neither an inventorying product nor a license agreement repository and certainly is not a product which combines the two pieces of information dynamically in the manner of the present invention. More specifically, this document relates to a method of efficiently generating a load testing scenario that allows a website to be tested according to browsing behaviors of typical users. However, this document does not disclose the salient feature of the present invention which

consists of a dynamic linking between inventory of software and hardware and corresponding license agreement information.

9.   Griswald's U.S. Patent No. 5,940,504 describes a license management system in which datagrams indicative of the use of a licensed product are sent from a licensee's site. It is intended to ensure that licensed software is not used impermissibly. In the approach of this document, a message is transmitted over a communication network to a license source site, where a comparison is made to information stored in a license database and after the comparison, a reply datagram is sent to the licensee in the form of either a denial or an approval of usage. However, this document does not contain a component in the form of an inventorying and monitoring program of software which systematically and automatically creates lists of resident software and which interacts with license agreement information in the manner of the present invention.

10.   U.S. Patent No. 5,825,883 to Archibald et al., describes a method and apparatus that seeks to apply to "digital applications" metering technology that is usually applied to software products. A "digital application" can be a text file, an image file or the like. This is accomplished by embedding a

tariff file within the digital application which includes

identification codes as well as other codes which are then used

by a meter module to generate accounting information. Accounting

messages are routed to a collection agency which, in turn,

generates debiting information for the user and crediting

information for the publishers of the digital application.

However, this document, like the ones above, does not describe an

inventory/monitoring system for software and does not describe

the combination of such an inventorying/monitoring system with a

system which correlates the information obtained from

inventorying/monitoring with license agreement information.

11. <u>U.S. Patent No. 5,796,941 to Lita</u>, is again

software intensive in that it describes a method for supervising

software execution in a license restricted environment. The

described system focuses on a problem of attempting to execute

licensed software on a machine where there may not be enough

licenses for as many users that want to use it simultaneously. A

supervising machine or processor monitors execution of a job on a

particular machine to detect stoppage due to license failure,

determines whether the reason for the failure is a license

violation, and then submits the remaining portions or segments of

the job for processing on another machine. Regardless, this

document too, fails to disclose an inventorying/monitoring system which operates in conjunction with a database which contains license agreement information and which provides the ability to dynamically correlate the inventorying information with the license agreement information.

12. <u>U.S. Patent No. 5,765,152 to Erickson</u>, is yet another document which is concerned with software licensing. This document does not disclose or suggest the features of the invention as described above.

13. The above remark also applies to <u>Olson's U.S. Patent No. 5,758,069</u> which discloses a licensing system which includes a license certificate database which stores all license information. This document does not disclose or suggest the present invention.

14. The distributed computer system which employs a license management system to account for software product usage described in <u>U.S. Patent No. 5,745,879 to Wyman</u>, similarly does not disclose or suggest the present invention which is a software construct combining inventory/monitoring with license agreement information dynamic viewing.

15. The inventorying/monitoring component of the present invention is described in U.S. Patent No. 5,590,056 to Robert Barritz, who is a co-inventor on the present application.

16. U.S. Patent No. 5,579,222 to Bains et al., is similarly directed to a system for administering license terms for software products on a network in accordance with the unique system described in this document. But, as with all of the prior documents, this reference does not concern itself with a construct which is the combination of an inventory/monitoring system with license agreement information database that are dynamically linked to one another. The ArgisBudget product as described, is primarily concerned with a budgeting process for IT assets.

17. U.S. Patent Nos.: 5,515,524 and 5,668,995 and the following articles: (1) *"Predictive Capacity Planning: A Proactive Approach;"* by Choon-Ling Sia et al., Information and Software Technology, March 1997; (2) *"Maximizing Performance/ Availability for Running Applications,"* No author is given; IBM Technical Disclosure Bulletin, October 1991; and (3) *"Automating Enterprise Performance Management;"* by A. Grummitt, Capacity Management Review, March 1998, all of which were cited in

connection with a somewhat related application, filed abroad, do not disclose or suggest a construct which is the combination of an inventory/monitoring system with license agreement information database that are dynamically linked to one another.

18. It appears to the applicant's undersigned representative that none of the references provided by the patent searcher that has been engaged for the purposes of this petition, discloses or suggests the invention disclosed in the claims of the present application.

Based upon the foregoing observations about the prior art, it is my opinion that the claims in the present application are allowable over the prior art.

I further declare that all statements made herein of my own knowledge are true, except for those statements made on information and belief, which are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize

the validity of this declaration, this application and any patent

resulting therefrom.

Dated: July 19, 2000

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Max Moskowitz

Encl.:   Prior Art References
           Form PTO-1449